

Senate File 471

H-1251

1 Amend Senate File 471, as amended, passed, and reprinted by
2 the Senate, as follows:

3 1. By striking everything after the enacting clause and
4 inserting:

5 <Section 1. NEW SECTION. 146B.1 Definitions.

6 As used in this chapter, unless the context otherwise
7 requires:

8 1. "*Abortion*" means the termination of a human pregnancy
9 with the intent other than to produce a live birth or to remove
10 a dead fetus.

11 2. "*Attempt to perform an abortion*" means an act, or
12 an omission of a statutorily required act, that, under the
13 circumstances as the actor believes them to be, constitutes a
14 substantial step in a course of conduct planned to culminate in
15 the performing of an abortion.

16 3. "*Department*" means the department of public health.

17 4. "*Fertilization*" means the fusion of a human spermatozoon
18 with a human ovum.

19 5. "*Major bodily function*" includes but is not limited
20 to functions of the immune system, normal cell growth, and
21 digestive, bowel, bladder, neurological, brain, respiratory,
22 circulatory, endocrine, and reproductive functions.

23 6. "*Medical emergency*" means a situation in which an
24 abortion is performed to preserve the life of the pregnant
25 woman whose life is endangered by a physical disorder, physical
26 illness, or physical injury, including a life-endangering
27 physical condition caused by or arising from the pregnancy, or
28 when continuation of the pregnancy will create a serious risk
29 of substantial and irreversible impairment of a major bodily
30 function of the pregnant woman.

31 7. "*Medical facility*" means any public or private hospital,
32 clinic, center, medical school, medical training institution,
33 health care facility, physician's office, infirmary,
34 dispensary, ambulatory surgical center, or other institution or
35 location where medical care is provided to any person.

1 8. *"Perform", "performed", or "performing"*, relative to an
2 abortion, means the use of any means, including medical or
3 surgical, to terminate the pregnancy of a woman known to be
4 pregnant with the intent other than to produce a live birth or
5 to remove a dead fetus.

6 9. *"Physician"* means a person licensed under chapter 148.

7 10. *"Postfertilization age"* means the age of the unborn
8 child as calculated from fertilization.

9 11. *"Probable postfertilization age"* means what, in
10 reasonable medical judgment, will with reasonable probability
11 be the postfertilization age of the unborn child at the time
12 the abortion is to be performed.

13 12. *"Reasonable medical judgment"* means a medical judgment
14 made by a reasonably prudent physician who is knowledgeable
15 about the case and the treatment possibilities with respect to
16 the medical conditions involved.

17 13. *"Unborn child"* means an individual organism of the
18 species homo sapiens from fertilization until live birth.

19 Sec. 2. NEW SECTION. **146B.2 Determination of**
20 **postfertilization age — abortion prohibited at twenty or**
21 **more weeks postfertilization age — exceptions — reporting**
22 **requirements — penalties.**

23 1. Except in the case of a medical emergency, in addition
24 to compliance with the prerequisites of chapter 146A, an
25 abortion shall not be performed or be attempted to be performed
26 unless the physician performing the abortion has first made
27 a determination of the probable postfertilization age of the
28 unborn child or relied upon such a determination made by
29 another physician. In making such a determination, a physician
30 shall make such inquiries of the pregnant woman and perform or
31 cause to be performed such medical examinations and tests the
32 physician considers necessary in making a reasonable medical
33 judgment to accurately determine the postfertilization age of
34 the unborn child.

35 2. *a.* A physician shall not perform or attempt to perform

1 an abortion upon a pregnant woman when it has been determined,
2 by the physician performing the abortion or by another
3 physician upon whose determination that physician relies,
4 that the probable postfertilization age of the unborn child
5 is twenty or more weeks unless, in the physician's reasonable
6 medical judgment, any of the following applies:

7 (1) The pregnant woman has a condition which the physician
8 deems a medical emergency.

9 (2) The abortion is necessary to preserve the life of an
10 unborn child.

11 b. If an abortion is performed under this subsection, the
12 physician shall terminate the human pregnancy in the manner
13 which, in the physician's reasonable medical judgment, provides
14 the best opportunity for an unborn child to survive, unless, in
15 the physician's reasonable medical judgment, termination of the
16 human pregnancy in that manner would pose a greater risk than
17 any other available method of the death of the pregnant woman
18 or of the substantial and irreversible physical impairment of a
19 major bodily function. A greater risk shall not be deemed to
20 exist if it is based on a claim or diagnosis that the pregnant
21 woman will engage in conduct which would result in the pregnant
22 woman's death or in substantial and irreversible physical
23 impairment of a major bodily function.

24 3. A physician who performs or attempts to perform an
25 abortion shall report to the department, on a schedule and in
26 accordance with forms and rules adopted by the department, all
27 of the following:

28 a. If a determination of probable postfertilization age of
29 the unborn child was made, the probable postfertilization age
30 determined and the method and basis of the determination.

31 b. If a determination of probable postfertilization age of
32 the unborn child was not made, the basis of the determination
33 that a medical emergency existed.

34 c. If the probable postfertilization age of the unborn
35 child was determined to be twenty or more weeks, the basis of

1 the determination of a medical emergency, or the basis of the
2 determination that the abortion was necessary to preserve the
3 life of an unborn child.

4 *d.* The method used for the abortion and, in the case of
5 an abortion performed when the probable postfertilization age
6 was determined to be twenty or more weeks, whether the method
7 of abortion used was one that, in the physician's reasonable
8 medical judgment, provided the best opportunity for an unborn
9 child to survive or, if such a method was not used, the basis
10 of the determination that termination of the human pregnancy
11 in that manner would pose a greater risk than would any other
12 available method of the death of the pregnant woman or of the
13 substantial and irreversible physical impairment of a major
14 bodily function.

15 4. *a.* By June 30, annually, the department shall issue a
16 public report providing statistics for the previous calendar
17 year, compiled from the reports for that year submitted in
18 accordance with subsection 3. The department shall ensure that
19 none of the information included in the public reports could
20 reasonably lead to the identification of any woman upon whom an
21 abortion was performed.

22 *b.* (1) A physician who fails to submit a report by the end
23 of thirty days following the due date shall be subject to a
24 late fee of five hundred dollars for each additional thirty-day
25 period or portion of a thirty-day period the report is overdue.

26 (2) A physician required to report in accordance with
27 subsection 3 who has not submitted a report or who has
28 submitted only an incomplete report more than one year
29 following the due date, may, in an action brought in the
30 manner in which actions are brought to enforce chapter 148,
31 be directed by a court of competent jurisdiction to submit a
32 complete report within a time period stated by court order or
33 be subject to contempt of court.

34 (3) A physician who intentionally or recklessly falsifies
35 a report required under this section is subject to a civil

1 penalty of one hundred dollars.

2 5. Any medical facility in which a physician is authorized
3 to perform an abortion shall implement written medical
4 policies and procedures consistent with the requirements and
5 prohibitions of this chapter.

6 6. The department shall adopt rules to implement this
7 section.

8 Sec. 3. NEW SECTION. **146B.3 Civil actions and penalties.**

9 1. Failure of a physician to comply with any provision of
10 section 146B.2, with the exception of the late filing of a
11 report or failure to submit a complete report in compliance
12 with a court order, is grounds for licensee discipline under
13 chapter 148.

14 2. A woman upon whom an abortion has been performed in
15 violation of this chapter may maintain an action against the
16 physician who performed the abortion in intentional or reckless
17 violation of this chapter for actual damages.

18 3. A woman upon whom an abortion has been attempted in
19 violation of this chapter may maintain an action against the
20 physician who attempted the abortion in intentional or reckless
21 violation of this chapter for actual damages.

22 4. A cause of action for injunctive relief to prevent a
23 physician from performing abortions may be maintained against a
24 physician who has intentionally violated this chapter by the
25 woman upon whom the abortion was performed or attempted, by
26 a parent or guardian of the woman if the woman is less than
27 eighteen years of age at the time the abortion was performed
28 or attempted, by a current or former licensed health care
29 provider of the woman, by a county attorney with appropriate
30 jurisdiction, or by the attorney general.

31 5. If the plaintiff prevails in an action brought under
32 this section, the plaintiff shall be entitled to an award for
33 reasonable attorney fees.

34 6. If the defendant prevails in an action brought under
35 this section and the court finds that the plaintiff's suit was

1 frivolous and brought in bad faith, the defendant shall be
2 entitled to an award for reasonable attorney fees.

3 7. Damages and attorney fees shall not be assessed against
4 the woman upon whom an abortion was performed or attempted
5 except as provided in subsection 6.

6 8. In a civil proceeding or action brought under this
7 chapter, the court shall rule whether the anonymity of any
8 woman upon whom an abortion has been performed or attempted
9 shall be preserved from public disclosure if the woman does not
10 provide consent to such disclosure. The court, upon motion
11 or on its own motion, shall make such a ruling and, upon
12 determining that the woman's anonymity should be preserved,
13 shall issue orders to the parties, witnesses, and counsel
14 and shall direct the sealing of the record and exclusion of
15 individuals from courtrooms or hearing rooms to the extent
16 necessary to safeguard the woman's identity from public
17 disclosure. Each such order shall be accompanied by specific
18 written findings explaining why the anonymity of the woman
19 should be preserved from public disclosure, why the order is
20 essential to that end, how the order is narrowly tailored to
21 serve that interest, and why no reasonable less restrictive
22 alternative exists. In the absence of written consent of the
23 woman upon whom an abortion has been performed or attempted,
24 anyone, other than a public official, who brings an action
25 under this section shall do so under a pseudonym. This
26 subsection shall not be construed to conceal the identity
27 of the plaintiff or of witnesses from the defendant or from
28 attorneys for the defendant.

29 9. This chapter shall not be construed to impose civil
30 or criminal liability on a woman upon whom an abortion is
31 performed or attempted.

32 **Sec. 4. NEW SECTION. 146B.4 Construction.**

33 1. Nothing in this chapter shall be construed as creating or
34 recognizing a right to an abortion.

35 2. Nothing in this chapter shall be construed as determining

1 life to begin at twenty weeks' postfertilization. Instead, it
2 is recognized that life begins at fertilization.

3 Sec. 5. SEVERABILITY CLAUSE. If any provision of this Act
4 or its application to a person or circumstance is held invalid,
5 the invalidity does not affect other provisions of applications
6 of this Act which can be given effect without the invalid
7 provision or application, and to this end the provisions of
8 this Act are severable.>

9 2. Title page, by striking lines 1 and 2 and inserting
10 <An Act relating to prohibitions on abortion based on
11 postfertilization age, providing for licensee discipline, and
12 providing civil penalties.>

COMMITTEE ON HUMAN RESOURCES

FRY of Clarke, Chairperson